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April 13, 2005

VIA EXPRESS MAIL NO.: EV121033585US

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Re: Motion for Discovery Sanctions and Request for Default Judgment by Opposers
National Football League and NFL Properties LLC to Nutrition for Life
International, Inc. in Opposition No. 91/157,365; Mark: NFLI

To the Commissioner:

Enclosed please find Opposers' original Motion for Discovery Sanctions and Request for Default Judgment in the above-referenced matter.

Please stamp and return the enclosed postcard to acknowledge receipt for our files.

Very truly yours,



Jessica A. Rose

Enclosure

cc: David M. Proper, Esq.
Rakesh M. Amin, Esq.
Robert L. Raskopf, Esq.
Claudia T. Bogdanos, Esq.



04-14-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and NFL
PROPERTIES LLC,

Opposers,

— against —

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

Opposition No. 91/157,365

**OPPOSERS' MOTION FOR DISCOVERY
SANCTIONS AND REQUEST FOR
DEFAULT JUDGMENT**

National Football League and NFL Properties LLC ("Opposers"), by and through their attorneys White & Case LLP, hereby request that the Board enter an order rendering a judgment by default against Applicant Nutrition For Life International, Inc. pursuant to TBMP § 527.01(a), Trademark Rule 2.120 (g)(1), and Federal Rule of Civil Procedure 37(b)(2).

FACTUAL BACKGROUND

1. On July 28, 2003, Opposers filed a notice of opposition against Applicant, claiming that they would be damaged by a registration by Applicant for the mark NFLI.
2. On September 26, 2003, Applicant filed an Answer to this Opposition.
3. On August 15, 2003, the Board informed Applicant that a notice of opposition to the registration sought by Applicant had been filed by Opposers and issued an order, inter alia, setting the dates for the discovery period to open on September 4, 2003, and to close on March 2, 2004.
4. On March 1, 2004, Opposers served by regular mail their First Set of Interrogatories and First Request for Production of Documents and Things ("discovery

requests"). Pursuant to TBMP §§ 405.04 and 406.04, Applicant's responses to Opposers' discovery requests were due on April 5, 2004. However, Applicant did not respond.

5. On April 30, 2004, Opposers moved to compel discovery.

6. On February 22, 2005, the Board granted Opposers' motion to compel and ordered Applicant to serve no later than March 24, 2005, its responses to Opposers' discovery requests.

7. To date, Applicant has not responded to Opposers' discovery requests.

8. Opposers are, therefore, entitled to entry of a default judgment.

ARGUMENT AND AUTHORITIES

If a party fails to comply with an order of the Board relating to discovery, the Board may issue an order rendering a judgment by default against the "disobedient party."¹ F.R.C.P. 37(b)(2)(C); see Caterpillar Tractor Co. v. Catfish Anglers Together, Inc., 194 U.S.P.Q. 99, 100 (T.T.A.B. 1976) (entering default judgment where applicant failed to comply with order to compel). Given the facts detailed supra, Applicant's violation of the Board's order, and Applicant's disregard for the rules governing opposition proceedings, default judgment is the appropriate remedy. Applicant's failure to comply with the Board's order directing it to respond to Opposers' discovery requests by March 24, 2005, and its disregard for the discovery rules of this proceeding, hinder Opposers' ability to prove its case. Accordingly, default judgment is proper.

¹ Here, the Board directed Opposers to this remedy in its Order granting Opposers' Motion to Compel when it advised: "[I]n the event applicant fails to comply with the Board's order, opposer's remedy lies in filing a motion for sanctions in the form of judgment pursuant to Trademark Rule 2.120 (g)(1)." (Feb. 22, 2005 Order.)

PRAYER FOR RELIEF

For these reasons, the Board should enter a default judgment in their favor and against Applicant, denying Applicant's application for registration of the mark NFLI.

Dated: New York, New York
April 13, 2005

Respectfully submitted,

WHITE & CASE LLP

By: Jessica A. Rose

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Claudia T. Bogdanos
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Attorneys for Opposers National Football
League and NFL Properties LLC.

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

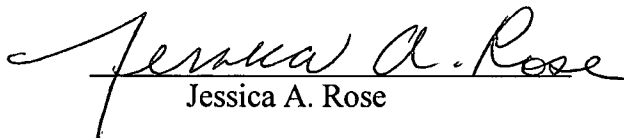
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I hereby certify that this document and instructions for payment of fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on this 13th day of April 2005.

Signature: Jessica A. Rose
Jessica A. Rose

CERTIFICATE OF SERVICE

I certify that on April 13, 2005, I caused to be served a copy of Opposers' Motion For Discovery Sanctions And Request For Default Judgment by first-class mail to Rakesh M. Amin, Esq., Amin Law LLC, attorney for Applicant, whose address is 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661.


Jessica A. Rose